

BILL ANALYSIS

Senate Research Center

S.B. 15
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State Affairs
7/21/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, there is no specific state law relating to personal injury claims for asbestos exposure or silica exposure. It is the purpose of this Act to protect the right of people with asbestos-related and silica-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. The Act also aims to prevent scarce judicial and litigant resources from being misdirected by the claims of individuals who have been exposed to asbestos or silica, but have no functional or physical impairment from asbestos-related or silica-related disease.

S.B. 15 creates a new chapter in the Civil Practice and Remedies Code addressing asbestos and silica claims.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 (Section 90.012, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. FINDINGS; PURPOSE. Sets forth legislative findings regarding asbestos and silica.

SECTION 2. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, as follows:

CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA

Sec. 90.001. DEFINITIONS. Defines "asbestos," "asbestos-related injury," "asbestosis," "certified B-reader," "chest x-ray," "claimant," "defendant," "exposed person," "FEV1," "FVC," "ILO system of classification," "MDL pretrial court," "MDL rules," "mesothelioma," "nonmalignant asbestos-related injury," "nonmalignant silica-related injury," "physician board certified in internal medicine," "physician board certified in occupational medicine," "physician board certified in oncology," "physician board certified in pathology," "physician board certified in pulmonary medicine," "plethysmography," "pulmonary function testing," "report," "respirable," "serve," "silica," "silica-related injury," and "silicosis."

Sec. 90.002. PULMONARY FUNCTION TESTING. Requires pulmonary function testing required by this chapter to be interpreted by a physician with specific qualifications.

Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING ASBESTOS-RELATED INJURY. (a) Requires a claimant asserting an asbestos-related injury to serve on each defendant specific information regarding physician reports.

(b) Requires the detailed occupational and exposure history required by Subsection (a)(2)(A)(ii) to describe the exposed person's principal employments and whether there was exposure to airborne contaminants, and the nature, duration, and frequency of the exposure to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment.

(c) Authorizes a claimant, if the pulmonary function test results do not meet the requirements of Subsection (a)(2)(D)(i) or (ii), to serve on each defendant a report by a physician board certified in specific fields and whose license and certification are not on inactive status verifying specific information relating to a physician-patient relationship, examinations and examination results, tests and test results, and diagnoses and conditions.

(d) Authorizes the claimant, if the radiological findings do not meet the requirements of Subsection (a)(2)(C)(i), to serve a report to each defendant, including specific information regarding diagnoses and copies of exam results, by a physician who is board certified in pulmonary medicine, internal medicine, or occupation medicine and whose license and certification are not on inactive status.

Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING SILICA-RELATED INJURY. (a) Requires a claimant asserting a silica-related injury to serve on each defendant a report including specific information regarding diagnoses and copies of exam results, by a physician who is board certified in pulmonary medicine, internal medicine, pathology, or, with respect to a claim for silicosis, occupational medicine, and whose license and certification were not on inactive status at the time the report was made.

(b) Requires the report required by Subsection (a), if the claimant is asserting a claim for silicosis, to also verify specific information regarding length of latency period, severity of exposure to silicosis, and the physician's conclusions.

(c) Requires the report required by Subsection (a), if the claimant is asserting a claim for silica-related lung cancer, to also include specific information regarding diagnosis and time lapse from initial exposure.

(d) Requires the report required by Subsection (a), if the claimant is asserting a claim for any disease other than silicosis and lung cancer alleged to be related to exposure to silica, to verify that the physician has diagnosed the exposed person with a disease other than silicosis or silica-related lung cancer and has concluded that the exposed person's disease is not more probably the result of causes other than silica exposure.

(e) Requires the detailed occupational and exposure history required by Subsection (a)(1)(B) to describe the exposed person's principal employments and whether there was exposure to airborne contaminants, and the nature, duration, and frequency of the exposure to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment.

Sec. 90.005. PROHIBITED BASIS FOR DIAGNOSIS. (a) Prohibits a physician, for purposes of this chapter, as the basis for a diagnosis, from relying on reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition that was conducted in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted.

(b) Provides that if a physician relies on any information in violation of Subsection (a), the physician's opinion or report does not comply with the requirements of this chapter.

Sec. 90.006. SERVING REPORTS. (a) Requires that in an action filed on or after the date this chapter becomes law, a report prescribed by Section 90.003 or 90.004 to be served on each defendant no later than the 30th day after the date the party answers or otherwise enters an appearance in the action.

(b) Provides that in an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following the motion, appeal, or otherwise, commences on or before the 90th day after the date this chapter

becomes law, a claimant is not required to serve a report on any defendant unless a mistrial, new trial, or retrial is subsequently granted or ordered.

(c) Requires a report to be served on each defendant, in an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, on or before the 60th day before trial commences or the 180th day after the date this chapter becomes law.

Sec. 90.007. MOTION TO DISMISS. (a) Authorizes the defendant, in an action filed on or after the date this chapter becomes law, if a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, to file a motion to dismiss the claimant's asbestos-related claims or silica-related claims. Requires the motion to be filed on or before the 30th day after the date the report is served on the defendant. Requires the motion to be filed on or before the 30th day after the date the report was required to be served on the defendant under Section 90.006, if a claimant fails to serve a report on the defendant. Requires the motion, if the basis of the motion is that the claimant has served on the defendant a report that does not comply with Section 90.003 or 90.004, to include the reasons why the report does not comply with that section.

(b) Authorizes a claimant to file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. Authorizes a report required by Section 90.003 or 90.004, to be filed, amended, or supplemented within the time required for responding to a motion to dismiss. Provides that the service of an amended or supplemental report does not require the filing of an additional motion to dismiss if the reasons stated in the original motion to dismiss are sufficient to require dismissal under this chapter.

(c) Requires the court, if the trial court is of the opinion that a motion to dismiss is meritorious, except as provided by Section 90.010(d) or (e), to grant by written order, the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims, as appropriate, against the defendant. Provides that a dismissal under this section is without prejudice to the claimant's right, if any, to assert claims for an asbestos-related injury or a silica-related injury in a subsequent action.

(d) Provides that all further proceedings in the case are stayed until the motion is heard and determined by the trial court, on the filing of a motion to dismiss under this section.

(e) Authorizes the trial court to extend the time limits provided in this section for filing or serving motions, responses, or reports, on the motion of a party showing good cause.

Sec. 90.008. VOLUNTARY DISMISSAL. Authorizes a claimant seeking damages arising from an asbestos-related injury or silica-related injury, before serving a report required by Section 90.003 or 90.004, to voluntarily dismiss the claimant's action. Provides that if a claimant files a voluntary dismissal under this section, the claimant's voluntary dismissal is without prejudice to the claimant's right to file subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

Sec. 90.009. JOINDER OF CLAIMANTS. Prohibits claims relating to more than one exposed person from being joined for a single trial, unless all parties agree otherwise.

Sec. 90.010. MULTIDISTRICT LITIGATION PROCEEDINGS. (a) Provides that the MDL (multidistrict litigation) rules apply to any action pending on the date this chapter becomes law in which the claimant alleges personal injury or death from exposure to asbestos or silica unless certain conditions are met.

(b) Authorizes the defendant, if the claimant fails to serve a report complying with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law under Subsection (a)(2), to file a notice of transfer to the MDL pretrial court. Requires the MDL pretrial court to remand the action to the court in which the action was filed, upon determining that the claimant served a report that complies with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law. Requires the MDL pretrial court to retain jurisdiction over the action pursuant to the MDL rules, if the MDL pretrial court determines that the report was not served on or before the 90th day after the date this chapter becomes law or the report served does not comply with Section 90.003 or 90.004.

(c) Requires the MDL pretrial court, in an action transferred to an MDL pretrial court in which the exposed person is living and has been diagnosed with certain diseases, to expedite the action in a manner calculated to provide the exposed person with a trial or other disposition in the shortest period that is fair to all parties and consistent with the principles of due process. Provides that the MDL pretrial court should, as far as reasonably possible, ensure that such action is brought to trial or final disposition within six months from the date the action is transferred to the MDL pretrial court, provided that all discovery and case management requirements of the MDL pretrial court have been satisfied.

(d) Prohibits the MDL pretrial court from dismissing the action pursuant to this chapter, but requires a retention of jurisdiction over the action under the MDL rules, in an action pending on the date this chapter becomes law that is transferred or pending in an MDL pretrial court in which the claimant does not serve a report that complies with Section 90.003 or 90.004. Requires the MDL pretrial court to not remand such action for trial unless certain conditions are met.

(e) Requires the MDL pretrial court, on motion by a defendant, in an action filed on or after the date this chapter becomes law that is transferred to an MDL pretrial court and in which the claimant does not serve on a defendant a report that complies with Section 90.003 or 90.004, to dismiss the action under Section 90.007 unless specific conditions are met.

(f) Provides that in an action in which the claimant seeks remand for trial under Subsection (d)(2) or denial of a motion to dismiss under Subsection (e):

(1) requires the claimant to serve on each defendant a specific report; and

(2) requires the MDL pretrial court to make specific determinations.

(g) Requires a court's determination under Subsection (f) to be made after conducting an evidentiary hearing at which the claimant and any defendant to the action may offer supporting or controverting evidence. Requires the parties to be permitted a reasonable opportunity to conduct discovery before the evidentiary hearing.

(h) Requires the court to state its findings under Subsection (f)(2) in writing and to address specific information in its findings.

(i) Provides that any findings made by a court under Subsection (f) are not admissible for any purpose at a trial on the merits.

(j) Provides that Subsections (d)(2) and (e)-(i) apply only in exceptional and limited circumstances in which the exposed person does not satisfy the medical criteria of Section 90.003 or 90.004 but can demonstrate meaningful asbestos-related or silica-related physical impairment that satisfies the requirements of Subsection (f). Provides that Subsections (d)(2) and (e)-(i) have limited application and prohibits them from being used to negate the requirements of this chapter.

(k) Requires each MDL pretrial court having jurisdiction over cases to which this chapter applies, to deliver a report to specific government officials, on or before September 1, 2010, including certain information relating to the court's caseload.

Sec. 90.011. BANKRUPTCY. Provides that nothing in this chapter is intended to affect the rights of any party in a bankruptcy proceeding or affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.).

Sec. 90.012. SUPREME COURT RULEMAKING. Authorizes the supreme court to promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related actions or silica-related actions if the rules are consistent with Section 90.009.

SECTION 3. Amends Section 16.003(a), Civil Practice and Remedies Code, to require a person to bring suit for trespass for injury to the estate not later than two years after the day the cause of action occurs, except as provided by Section 16.0031.

SECTION 4. Amends Subchapter A, Chapter 16, Civil Practice and Remedies Code, by adding Section 16.0031, as follows:

Sec. 16.0031. ASBESTOS-RELATED OR SILICA-RELATED INJURIES. (a) Provides that in an action for personal injury or death resulting from an asbestos-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the date of the exposed person's death or the date that the claimant serves a report complying with Section 90.003 or 90.010(f).

(b) Provides that in an action for personal injury or death resulting from a silica-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the date of the exposed person's death or the date that the claimant serves a report complying with Section 90.004.

SECTION 5. Amends Section 51.014(a), Civil Practice and Remedies Code, to authorize a person to appeal from an interlocutory order of a district court, county court at law, or county court that denies a motion to dismiss filed under Section 90.007.

SECTION 6. Amends Section 22.225(d), Government Code, to provide that a petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(11), Civil Practice and Remedies Code.

SECTION 7. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to certain hearings and trials, including actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis.

SECTION 8. Amends Subchapter E, Chapter 21, Insurance Code, by adding Article 21.53X, as follows:

Art. 21.53X. PROHIBITED PRACTICES RELATED TO EXPOSURE TO ASBESTOS OR SILICA. (a) Defines "health benefit plan."

(b) Provides that this article applies to any entity that offers a health benefit plan or an annuity or life insurance policy or contract.

(c) Prohibits an entity that offers a health benefit plan or an annuity or life insurance policy or contract from using the fact of a person's exposure to asbestos fibers or silica or the person's filing of a claim governed by Chapter 90, Civil Practice and Remedies Code, as the basis for certain punitive actions, that

adversely affect the person's eligibility for or coverage under the policy or contract.

SECTION 9. (a) Makes application of Sections 90.009 and 16.0031, Civil Practice and Remedies Code, as added by this Act, prospective. Prohibits Section 16.0031, Civil Practice and Remedies Code, as added by this Act, from operating to revive any claims that are barred by application of the law in effect immediately before the effective date of this Act.

(b) Makes application of Article 21.53X, Insurance Code, as added by this Act, prospective.

SECTION 10. Provides that there is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of this Act. Provides that the direct appeal is an accelerated appeal.

SECTION 11. Provides that Section 90.007, Civil Practice and Remedies Code, as added by this Act, allowing the dismissal of claims for failing to serve reports complying with the requirements of Sections 90.003 and 90.004, Civil Practice and Remedies Code, Section 90.010(d), Civil Practice and Remedies Code, as added by this Act, setting standards for certain cases to be remanded for trial from MDL pretrial courts, and Section 16.0031, Civil Practice and Remedies Code, as added by this Act, relating to the limitations period for asbestos-related and silica-related causes of action, are not severable, and none of those sections would have been enacted without the others. Provides that if any of those provisions are held invalid, all provisions are invalid. Provides that if any other provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act, other than Sections 90.007, 90.010(d), and 16.0031, Civil Practice and Remedies Code, as added by this Act, are declared severable.

SECTION 12. Effective date: September 1, 2005.